THE HOARDING AND PROFITEERING PREVENTION ACT, 1948

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MYSORE ACT No. LX OF 1948.

THE HOARDING AND PROFITEERING PREVENTION ACT, 1948.

(Received the assent of His Highness the Maharaja on the Seventh day of August 1948.)

An Act to provide for the prevention of hoarding and profiteering.

WHEREAS it is expedient to provide for the prevention of hoarding and profiteering;

It is hereby enacted as follows:—

1. (1) This Act may be called the Hoarding and Profiteering Prevention Act, 1948. Short title, extent and commencement

(2) It extends to the [1][whole of the State of Mysore except Bellary District].

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context,— Interpretation

(*a*) "article" includes any article or thing (except food-grains) which has not, by notification in the official Gazette, been declared by the Government to be an article or thing to which this Act does not apply;

(*b*) "Controller" means any officer appointed as Controller of Civil Supplies by the Government in this behalf and includes any officer who may be authorised by the Government by notification in the official Gazette to exercise the powers of the Controller;

(*c*) "dealer" means a person carrying on the business of selling any article, whether wholesale or retail;

(*d*) "Inspector" means an Inspector appointed for the purposes of this Act by the Government and includes an Assistant Inspector;

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1. See the Mysore Adaptation of Laws Order, 1953.

(*e*) "landed cost" means and includes the actual cost of the article as mentioned in the invoice received by the importer and all expenses incurred on account of insurance, freight, banking charges, customs duty, landing and clearing charges incurred by the importer up to the receipt of the article at his godown at the port at which it is landed;

(*f*) "producer" includes a manufacturer;

(*g*) the expression 'offer for sale' shall be deemed to include a reference to an intimation by a person of the price proposed by him for the sale of an article, made by the publication of a price list, by exposing the article for sale in association with a mark indicating price, by the furnishing of a quotation, or otherwise howsoever;

(*h*) an article shall be deemed to be in the possession of a person—

(i) when it is held on behalf of that person by another person or when held by that person on behalf of another person;

(ii) notwithstanding that it is mortgaged to another person.

Fixing of maximum quantities which may be held or sold and maximum prices

3. (1) The Government may, by notification in the official Gazette, fix in respect of any article—

(*a*) the maximum quantity which may at any one time be possessed by a dealer or producer;

(*b*) the maximum quantity which may in any one transaction be sold to any person;

(*c*) the maximum price or rate which may be charged by a dealer or producer.

(2) The quantities and prices or rates fixed in respect of any article under this section may be different in different localities or for different classes of dealers or producers.

Restrictions on possession and sale by dealers or producers where maximum is fixed under section 3.

4. (1) No dealer or producer shall—

(*a*) have in his possession at any one time a quantity of any article exceeding the maximum fixed by notification under clause (*a*) of sub-section (1) of section 3; or

(*b*) sell or offer for sale to any person in any one transaction a quantity of any article exceeding the maximum fixed by notification under clause (*b*) of sub-section (1) of section 3 ; or

(*c*) sell or offer for sale or otherwise dispose of to any person any article for a price or at a rate exceeding the maximum fixed by notification under clause (*c*) of sub-section (1) of section 3.

(2) Where a dealer or producer disposes of an article by having it sold by auction on his behalf, the auctioneer as well as the dealer or producer shall be liable to punishment provided by sub-section (1) of section 14 if in any such sale there is a contravention of clause (*c*) of sub-section (1).

(3) Where any article is sold, offered for sale or otherwise disposed of in contravention of sub-section (1) by a dealer or producer through any person employed by him or acting on his behalf, such person and also, unless they prove that they exercised due diligence to prevent such contravention the dealer or producer, as the case may be, and any person having charge on behalf of the dealer or producer of the place where the contravention occurred, shall be liable to the punishment provided by sub-section (1) of section 14 whether or not they were present when the contravention occurred.

Restrictions on possession by dealer or producer where no maximum is fixed under section 3.

5. Where no maximum has been fixed by notification under clause (*a*) of sub-section (1) of section 3,—

(*a*) no dealer shall have in his possession at any one time a quantity of any article exceeding one-quarter of the total quantity of that article held by him in the course of the year 1939, or as the case may be, exceeding the quantity which the Controller or other officer empowered in this behalf by the Government may intimate to him as the maximum quantity of that article which he may have in his possession at any one time ; and

(*b*) no producer shall have in his possession at any one time a quantity of any article exceeding one-quarter of his total production of that article during that one of three years 1940, 1941 and 1942 in which his production was greatest, or as the case may be, exceeding the quantity which the Controller or other officer empowered in this

behalf by the Government may intimate to him as the maximum quantity of that article which he may have in his possession at any one time.

Restriction on price where no maximum is fixed under section 3

6. (1) Where no maximum has been fixed by notification under clause (*c*) of sub-section (1) of section 3, no dealer or producer shall sell or offer for sale or otherwise dispose of an article for a consideration which is unreasonable.

(2) For the purposes of this section a consideration is unreasonable if, whether it is exclusively in money or not,—

(*a*) the purchaser is, as a condition of sale, required to purchase at the same time any other article ;

(*b*) where the sale is by a dealer, the consideration exceeds the amount represented by the addition allowed by the normal trade practice in force on the 31st day of August 1939, to—

(i) the landed cost of the article increased by any charges for freight and octroi or other duties incurred during transit between the importer's godown at the port of landing and the place of delivery to the consignee in [1][the State of Mysore except Bellary District]; or

(ii) the price at which the producer sold the article in the case of an article which is not imported ;

(*c*) where the sale is by a producer, the consideration exceeds the amount represented by the addition allowed by the normal trade practice in force on the 31st day of August 1939 to the cost of production of the article, such cost of production being deemed to be exclusive of the amount, if any, by which the price paid by the producer for any component part of the article exceeded (i) the maximum price fixed for the component part under section 3 and in force at the time of its purchase by the producer, or (ii) where no maximum price had been so fixed for the component part, the amount represented by the addition allowed by the normal trade practice in force on the 31st day of August 1939 to the cost of production of the component part :

1. See the Mysore Adaptation of Laws Order, 1953.

Provided that, where the addition allowed by such normal trade practice exceeds or is alleged to exceed 20 per cent, the dealer or producer, as the case may be, shall report the fact to the Controller who may either sanction such addition or for reasons to be recorded in writing, order its variation ; and the dealer or producer, as the case may be, shall be deemed to sell for a consideration which is unreasonable if such report has not been made or if after such report has been made and the Controller has varied such addition, the price charged exceeds the limits approved by the Controller under this proviso.

(3) The Controller may make or cause to be made a certificate stating the landed cost of any imported article dealt in by a dealer, and shall, on request made by any dealer, grant or cause to be granted to that dealer a certificate stating the landed cost of any such imported article.

(4) Where a dealer or producer disposes of an article by having it sold by auction on his behalf, the auctioneer as well as the dealer or producer shall be liable to the penalty provided by sub-section (1) of section 14 if in any such sale there is a contravention of sub-section (1).

(5) Where any article is sold, offered for sale or otherwise disposed of in contravention of sub-section (1) by a dealer or producer through any person employed by him or acting on his behalf, such person and also, unless they prove that they exercised due diligence to prevent such contravention, the dealer or producer, as the case may be, and any person having charge on behalf of the dealer or producer of the place where the contravention occurred, shall be liable to the punishment provided by sub-section (1) of section 14 whether or not they were present when the contravention occurred.

General limitation on quantity to be possessed at any one time.

7. (1) No person shall have in his possession at any one time a greater quantity of any article to which this section applies than the quantity necessary for the reasonable needs of himself and his family for a period of three months or such longer period as may for special reasons in his particular circumstances be considered a reasonable period for which to make provision.

(2) For the purposes of sub-section (1), the expression " reasonable needs" includes the fulfilment of social or religious or other customary obligations.

(3) Nothing in this section shall apply to a dealer or producer in respect of any article sold by or produced by him.

(4) This section shall apply only to such articles as the Controller may, by order published in the official Gazette, specify for the purpose.

Duty to declare possession of excess stocks.

8. Any person having in his possession a quantity of any article exceeding that permitted by or under this Act shall forthwith report the fact to the Controller or other officer empowered in this behalf by the Government, and shall take such action as to the storage, distribution or disposal of the excess quantity as the Controller or such officer may direct.

Refusal to sell.

9. No dealer or producer shall, unless previously authorised to do so by the Controller or other officer empowered in this behalf by the Government, without sufficient cause refuse to sell to any person any article within the limits, if any, as to quantity imposed by this Act.

Explanation.—The possibility or expectation of obtaining a higher price for an article at a later date shall not be deemed to be a sufficient cause for the purposes of this section.

Power of Controller to order or prohibit sale.

10. The Controller may, by order in writing, direct any dealer or producer—

(*a*) to sell to any specified person any specified article or articles in such quantity, within the limits, if any, as to quantity imposed by this Act, as may be specified in the order,

(*b*) not to sell except to such persons as the Controller may, in the order or otherwise, specify any specified articles or classes of articles for such period not exceeding twenty-one days as may be specified in the order.

Cash memorandum to be given of certain sales.

11. (1) Every dealer or producer when selling any article for cash shall, if the amount of the purchase is ten rupees or more in all cases, and if the amount of the purchase is less than ten rupees when so requested by the purchaser, give to the purchaser a cash memorandum containing particulars of the transaction.

(2) The Government may, by notification in the official Gazette, prescribe the particulars to be contained in any such cash memorandum.

(3) The Government may, by notification in the official Gazette, exempt specific areas, classes of dealers or producers, or commodities from the operation of this section.

Marking of prices and exhibiting price list.

12. (1) The Controller may direct any dealer or producer to mark articles exposed or intended for sale with the sale prices or to exhibit on his premises a price list of articles held by him for sale, and may further give directions as to the manner in which any such direction as aforesaid is to be carried out.

(2) The Controller may, by order published in the official Gazette, issue a direction under sub-section (1) generally to all dealers in or producers of a particular article or particular articles.

(3) No dealer shall destroy, efface or alter or cause to be destroyed, effaced or altered any label or mark affixed to an article and indicating the price marked by a producer.

Powers of Controller, Inspector, etc.

13. (1) The Controller or an Inspector or an Officer empowered in this behalf by the Government may—

(*a*) direct a dealer or producer to maintain records of sale and purchase transactions;

(*b*) direct a dealer or producer to furnish any information he may require as to the business carried on by such dealer or producer;

(*c*) direct a dealer or producer to furnish any information possessed by such dealer or producer as to the business carried on by any other person;

(*d*) inspect or cause to be inspected any books or other documents belonging to or under the control of any dealer or producer;

(*e*) enter and search any premises;

(*f*) seize or direct the seizure of any article in respect of which he suspects that an offence under this Act has been, is being or is about to be committed,

and thereafter take or direct the taking of all measures necessary for securing the production of the article in a Court.

(2) The Controller may, by order published in the official Gazette, issue to all dealers or producers of a specified class a direction such as is referred to in clause (*a*) or clause (*b*) of sub-section (1).

(3) The Controller and such Inspectors and other officers as may be empowered by the Government in this behalf shall, within the respective areas for which they are appointed, have power to investigate all offences punishable under this Act and in conducting any such investigation shall, within the said areas, have all the powers, duties, privileges and liabilities of an officer in charge of a Police Station under the Code of Criminal Procedure, 1904, when investigating a cognisable offence within the limits of his station.

Penalties.

14. (1) Whoever contravenes any of the provisions of this Act shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) Whoever fails to comply with any direction made under authority conferred by this Act shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) A court convicting any person of an offence punishable under this Act, may order any article, in respect of which the offence was committed to be forfeited to the Government.

(4) Notwithstanding anything to the contrary in clause (*a*) of sub-section (1) of section 32 of the Code of Criminal Procedure, 1904, a Magistrate of the First Class specially empowered by the Government in this behalf may impose a sentence of fine exceeding one thousand rupees for any offence punishable under this Act.

Right of buyer to avoid prohibited transactions or to recover excess price.

15. (1) Where any person has been convicted of the offence specified in sub-section (1) of section 6, then—

(*a*) if the prosecution was in respect of a sale, the buyer at that sale, and

(*b*) if the prosecution was in respect of a sale or an offer to sell or a disposal otherwise than by sale, the buyer under any sale of similar articles effected at the same or a higher price in the course of that business in contravention of the provisions of sub-section (1) of section 6 before the date of conviction, may at his option—

(i) either treat the sale as void, and recover from the seller, as money received by him for the use of the buyer, any amount paid by the buyer as consideration therefor, or

(ii) affirm the sale but recover as aforesaid to the extent of any loss sustained by him by reason of the contravention, regard being had to any consideration received or to be received by him for a resale of the articles :

Provided that the buyer shall not be entitled to exercise the rights conferred by clause (i) if any rights acquired by a third party would be prejudiced thereby, or after the lapse of an unreasonable time from the date of sale, or unless he tenders the articles to the seller in substantially the same state as that in which they were when the property passed to the buyer.

(2) Any sum recoverable under this section shall be recoverable with interest thereon at the rate of five per cent per annum from the date when it was paid.

(3) No person may exercise any rights conferred by this section who is himself liable to punishment as an abettor of the contravention in question.

16. No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Government, or of an officer empowered by the Government to grant such sanction. Procedure.

17. (1) In any prosecution for a contravention of the provisions of section 6 when the sale of, or offer to sell, or disposal of, the article in question and the price at which it was made, have been proved, then, if it is also proved that such price exceeded by more than 20 per cent, the amount specified in sub-clause (i) or (ii) of clause (*b*) of sub-section (2) of section 6 or in clause (*c*) of that sub-section, as the case may be, it shall lie on the accused Special rules of evidence.

person to prove that the sale price charged was within the limits approved by the Controller under the proviso to the said sub-section.

(2) For the purposes of section 6, a certificate signed by or under authority from the Controller as to the landed cost of any articles shall be conclusive proof of that landed cost, and in giving the said certificate such of the following charges as are actually incurred in connection with the article shall be taken into account, namely, buying commission, insurance premium, freight, customs duty paid, landing and clearing charges up to deposit of the article in the importer's warehouse or other place of storage and charges made by banks for transmitting shipping documents.

Offences by corporations.

18. If the person contravening any provision of this Act is a company or other body corporate, every director, manager, or secretary or other administrative officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

Certain officers to be deemed public servants.

19. The Controller, Inspectors and Officers empowered for the purposes of sections 5, 8, 9 or 13 by the Government shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, as in force in Mysore.

Bar of legal proceedings.

20. No suit, prosecution or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

Savings of other laws.

21. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating the keeping, storage, distribution, disposal, or price of articles.

Exception of certain articles.

22. The provisions of this Act shall not apply—

(*a*) to the possession or sale of any article intended for export from [1][State of Mysore except Bellary District] by a person holding an export license for the export of that article;

1. See the Mysore Adaptation of Laws Order, 1956.

(*b*) to the possession or sale of any article by a person discharging a contract entered into with the Government where the possession or sale is in pursuance of that contract.

23. The Hoarding and Profiteering Prevention Ordinance, 1943 (XXXV of 1943) as continued by the Retrocession (Application of Laws) Act, 1947, in the Retroceded Area is hereby repealed. Repeal.